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U.S. COURTS

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REC'D
CAMERON S. BURKE
CLERK IDAHO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CHRIS J. DENNISON)

Plaintiff,)

v.)

CONTINENTAL CASUALTY COMPANY)
an Illinois corporation; CNA GROUP)
LIFE ASSURANCE COMPANY, a)
wholly owned subsidiary of Continental)
Casualty Company, RURAL)
TELEPHONE COMPANY, and Idaho)
corporation)

Defendants.)

Case No.: CIV 02-507-S-LMB

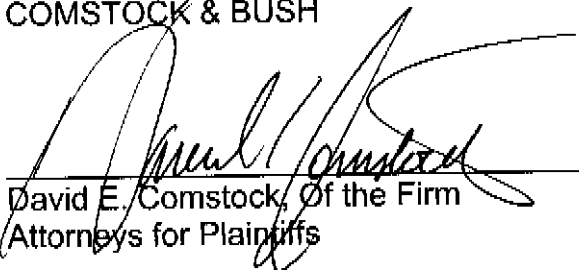
**MOTION FOR LEAVE TO
AMEND COMPLAINT**

COMES NOW, Plaintiff above named, by and through his counsel of record, and moves the Court for an Order allowing leave to amend the complaint to state clearly that this claim is brought seeking relief allowed pursuant to ERISA. This Motion is based upon the pleadings and documents filed herein. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiffs' proposed Amended Complaint.

MOTION FOR LEAVE TO AMEND COMPLAINT - 1

RESPECTFULLY SUBMITTED THIS 13 day of April, 2003.

COMSTOCK & BUSH



David E. Comstock, Of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on 18 day of April, 2003, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Donald F. Carey
Quane Smith LLP
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Idaho Falls ID 83402-2948

☐ Facsimile (208) 529-0005
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David E. Comstock

EXHIBIT 1

David E. Comstock
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Boise, Idaho 83701-2774
(208)344-7700
ISB No.: 2455

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CHRIS J. DENNISON

Plaintiff,

v.

CONTINENTAL CASUALTY COMPANY)
an Illinois corporation; CNA GROUP)
LIFE ASSURANCE COMPANY, a)
wholly owned subsidiary of Continental)
Casualty Company, RURAL)
TELEPHONE COMPANY, and Idaho)
corporation)

Defendants.

Case No.: CIV 02-507-S-LMB

**AMENDED COMPLAINT FOR
DAMAGES PURSUANT TO ERISA**

COMES NOW, Plaintiff Chris J. Dennison by and through his attorneys of record,
Comstock & Bush, and as and for a cause of action against the Defendants above-
named, states and alleges as follows:

I.

PARTIES AND JURISDICTION

1. This is a complaint for damages based upon a wrongful denial of disability

benefits brought pursuant to 29 U.S.C. § 1132 ERISA.

2. At all times relevant hereto, Defendant Continental Casualty Company, (hereinafter "Continental") was, upon information and belief, an Illinois Corporation, whose principal place of business is Chicago, Illinois.

3. At all times relevant hereto, Defendant CNA Group Life Assurance Company, (hereinafter "CNA") was a wholly owned subsidiary of Defendant Continental and was doing business within the State of Idaho.

4. At all times relevant hereto, Defendant Rural Telephone Company (hereinafter "RTC") was an Idaho Corporation, doing business in the State of Idaho, whose principal place of business is Glenns Ferry, Idaho.

5. Jurisdiction in this court is vested pursuant to 29 U.S.C. §1132(e)(1).

GENERAL ALLEGATIONS

6. Plaintiff hereby incorporates and realleges each and every preceding paragraph and incorporate the same by reference herein.

7. At all times relevant hereto, Plaintiff Chris J. Dennison was employed as Controller of Rural Telephone Company.

8. At all times relevant hereto, Plaintiff Chris J. Dennison, as an employee of Rural Telephone Company, was an eligible participant in his employer's Group Long-Term Disability Insurance Plan, policy no.: SR83116494. Said Group Long-Term Disability Insurance Plan was purchased from and underwritten by Defendant Continental and serviced by its wholly owned subsidiary, Defendant CNA.

9. At all times relevant hereto Defendant Rural Telephone Company was the "Plan Administrator" of Plaintiff's Group Long-Term Disability Insurance Plan, policy no.:

10. Due to failed back syndrome and other on-going medical issues, on February 7, 2002, Plaintiff Chris J. Dennison filed a claim for disability benefits with his employers Group Long-Term Disability Insurance Plan surety. As part of the required documents submitted as proof, Mr. Dennison's claim packet contained the attestation of his treating physician, Tyler Frizzell, M.D., that as of February 7, 2002, Mr. Dennison was totally disabled.

11. On or about March 8, 2002, Plaintiff was notified that he was terminated from his employment with Rural Telephone Company, effective March 6, 2002.

12. On or about March 12, 2002, Defendant CNA contacted Mr. Dennison's employer, Rural Telephone Company, and spoke with General Manager, Michael Richmond. Mr. Richmond failed to inform CNA that Plaintiff had been terminated and wrongfully informed CNA that Rural Telephone Company would make reasonable accommodations to accommodate Mr. Dennison's physical condition and that Mr. Dennison's position as Controller was strictly sedentary.

13. On March 15, 2002, Plaintiff Chris J. Dennison was notified by Defendant CNA that his claim for Long-Term Disability Benefits was denied.

14. On or about May 2, Mr. Dennison appealed Defendant CNA's initial denial of disability benefits, enclosing additional medical documentation reflecting that he was totally disabled. Mr. Dennison also informed CNA that Mr. Richmond had given incomplete and inaccurate information.

15. Between May 2, 2002 and June 10, 2002, Mr. Dennison submitted additional documentation to Defendant CNA, supporting his claim for Long-Term

Disability.

16. On or about June 24, 2002, CNA's Appeals Committee notified the Plaintiff that despite the opinion of Tyler Frizzell, M.D., Plaintiff's treating physician, that Mr. Dennison was unable to work, Defendant CNA's final determination was a complete denial of Mr. Dennison's claim for Long-Term Disability Benefits

17. By virtue of the contract of insurance existing between Plaintiff Chris J. Dennison and Defendants Continental and CNA, said Defendants owed Mr. Dennison a contractual duty to ensure that his claim for Long-Term Disability Benefits was evaluated and considered in a fair and impartial manner. As set forth above, Plaintiff exhaustively complied with all terms and conditions of said contract during his application for benefits and during the appeal process.

18. Defendants Continental and CNA have breached their duties as required by the contract of insurance existing between Plaintiff and Defendants by arbitrarily and capriciously denying Mr. Dennison Long-Term Disability Benefits.

19. As the named Plan Administrator for Plaintiff's Group Long-Term Disability Insurance Plan, policy no.: SR83116494, Defendant RTC owed Plaintiff a fiduciary duty to ensure that his claim for Long-Term Disability Benefits was presented to Defendant CNA in a fair and impartial manner.

20. Defendant RTC breached this duty by wrongfully informing CNA that Mr. Dennison *could* work at RTC and that RTC would accommodate his medical condition allowing him to perform his job, when it had no intention of doing so.

21. As the party whose duty it was to service the Plaintiff's Group Long-Term Disability Insurance Plan, policy no.: SR83116494, Defendant CNA owed Plaintiff a

fiduciary duty to ensure that his claim for Long-Term Disability Benefits was evaluated and considered in a fair and impartial manner.

22. Defendant CNA breached this duty by the existence of its inherent conflict of interest, by ignoring the evidence presented by Plaintiff's own physician and by failing to investigate the validity of the information it was provided by Defendant RTC to the effect that Mr. Dennison *could* work at RTC and that RTC would accommodate his medical condition allowing him to perform his job, when RTC had no intention of doing so.

23. As a direct and proximate result of Defendants' conduct complained of herein, Plaintiff has suffered and will continue to suffer a loss of benefits and other consequential economic damages in an amount to be more readily ascertained at trial.

DAMAGES

24. As a direct and proximate result of the Defendants' conduct complained of herein, Plaintiff has suffered the following damages:

(a) Past and future loss of income and/or benefits which Plaintiff Chris J. Dennison would have reasonably expected to receive in Long-Term Disability Benefits; and,

(b) Attorney fees, penalties, interest, and expenses incurred reasonably related hereto.

DEMAND FOR ATTORNEY FEES

As a result of Defendants' conduct complained of herein, Plaintiff has been compelled to retain the law firm of Comstock & Bush, and has incurred and will incur costs and reasonable attorneys fees related thereto, for which Plaintiff is entitled to a

separate award of reimbursement pursuant to Idaho Code Sections 12-120, 41-1329 and 29 U.S.C. 1101, et. seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For prospective loss of income and/or benefits in an amount which shall be more readily ascertained at the time and place set for trial;
2. For prejudgment interest as allowed by law;
3. For an award of costs and attorneys fees reasonably incurred in the prosecution of this action;
4. For any penalties provided for by force of law; and,
5. For such other and further relief as this court deems just and equitable in these premises.

DATED This 18 day of April, 2003

COMSTOCK & BUSH

By:


David E. Comstock, Of the Firm
Attorneys for Plaintiff